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REFLECTIONS
ON
THE CAUSES
OF
UNHAPPY MARRIAGES,
AND ON
VARIOUS SUBJECTS THEREWITH CONNECTED.
AN EPITOME OF THE
LAW OF MARRIAGE AND DIVORCE.
WITH JUDICIAL DECISIONS TOUCHING
SEPARATION, ALIMONY, THE DEBTS AND SEPARATE
PROPERTY OF THE WIFE.
To which is added, a brief Account of the
CIVIL LAW AND SPIRITUAL COURTS,
WITH A NEW PLAN
FOR SETTLING SEPARATE MAINTENANCE
WITHOUT
Ecclesiastical Process.

By *RANDLE LEWIS*, Conveyancer,
OF THE INNER TEMPLE.

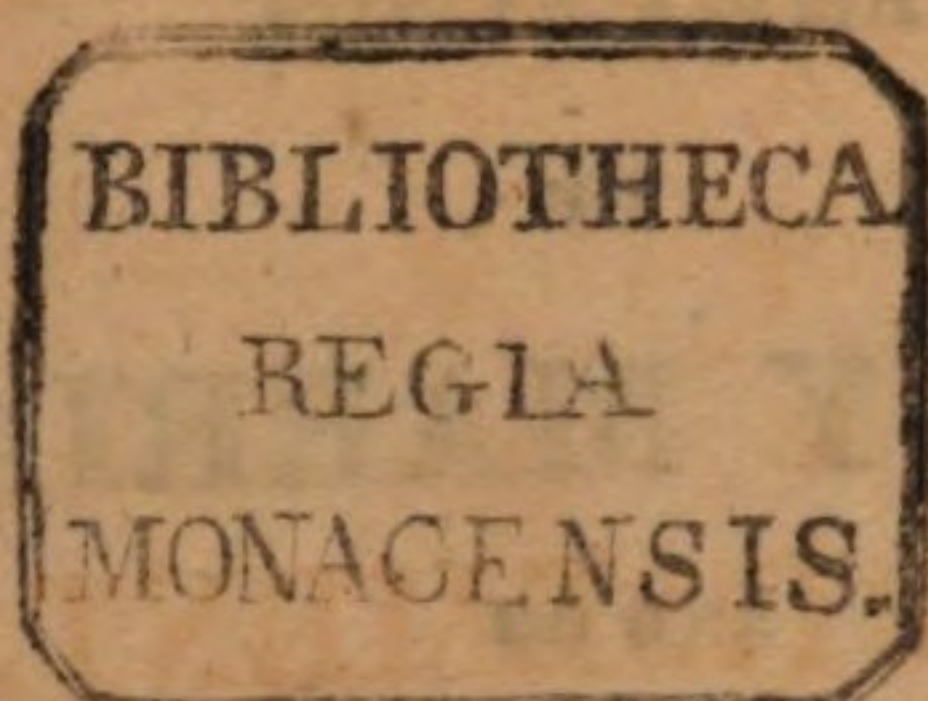
LONDON,

Printed for W. CLARKE and Sons, Portugal-street,
Lincoln's Inn.

1805.

114 BG

Lewis: Unhappy Marriages



W. Flint, Printer,
Green Arbour court, St. Sepulchre's.

ADVERTISEMENT.

THE following sheets will doubtless present themselves to the reader as a novelty : the subjects are various, but they are mostly connected ; part of them have not hitherto been treated on, and none in the same way.

The author having designed this little book for the perusal and information of the middle class of society, he has endeavoured

to compose it in a plain, familiar, and concise manner; and introduced some passages, for the use and assistance of such as may be uninformed what books to consult, or may not have leisure or means to read voluminous or expensive works.

The brevity of the law matters may convince the reader, that they are not offered as advice in any particular case, but as general points only.

The writer has studied to avoid any thing partial or exceptionable; but if he shall be considered defective in that, or censurable in this, he hopes that the candid reader will attribute it more to his head than to his heart; having penned the following work during those hours

which have been abstracted from professional pursuits.

With all its imperfections, however, and whatever may be its fate, the composer, sensible of his liability to error, submits it to a liberal public ; and as to the juridical parts of it, he relies on the candor of that profession, of which he has long had the honor to be a member.

He cannot quit this subject without expressing his gratitude to those enlightened authors from whose elaborate compositions he has derived occasional aid ; and he begs leave to assure his readers, that if his humble labours, so happily assisted, should prove advantageous to the public at large,

it is impossible that he can feel a higher gratification.

Church-yard Court, Temple,

September 23, 1803.

CONTENTS.

CHAP. I.	Page
R EFLECTIONS on the Causes of unhappy Marriages	1
CHAP. II.	
On Love and Marriage.....	17
CHAP. III.	
On Modesty—Chastity—Continence—and Adul- tery.....	33
CHAP. IV.	
On the Means of promoting domestic Happiness	47
CHAP. V.	
On Separations—the usual Methods adopted— Advertisements—the Wife's Debts—Credit by Tradesmen—with Advice thereon.....	62
CHAP. VI.	
An Epitome of the Law of Marriage, shewing who may marry—the requisites to a valid Marriage— what are void—and the relative Powers of Hus- band and Wife.....	74
CHAP. VII.	
An Epitome of the Law of Divorce, shewing when it may be obtained—when Alimony is allowed—and Notes of judicial Decisions in illustration	88

CONTENTS.

CHAP. VIII.	Page
Notes on judicial Decisions touching Separation— Alimony—Debts of the Wife—Elopement— Adultery—and Divorce	97
CHAP. IX.	
Notes on judicial Decisions concerning the Power of a Wife over her separate Property	107
CHAP. X.	
A brief Account of the civil Law—and of the spi- ritual Courts—and their Jurisdiction in matri- monial Causes	115
CHAP. XI.	
Reflections on Proceedings by Paupers in different Courts—and on a Suit in the ecclesiastical Court between a necessitous Man and his Wife— and its attendant Consequences	126
CHAP. XII.	
How legal alimony is settled—the Utility of it— with a new Plan for settling separate Mainte- nance without ecclesiastical Process	143
CHAP. XIII.	
Observations on Arbitrations and Conveyancing	150

REFLECTIONS
ON
UNHAPPY MARRIAGES.

CHAP. I.

On the Causes of unhappy Marriages.

THE marriage state is the foundation of the community, and the chief band of society ; and by means of the latter our wants are supplied, and our lives rendered comfortable, our capacities are enlarged, and our virtuous affections called forth into proper exercise. Matrimony enlarges the

scene of our happiness and misery, for it is always an insipid, a vexatious, or a happy condition ; yet it is not commonly unhappy but as life itself is so, and many who complain of connubial sorrows, have perhaps, as much satisfaction as their natures would have admitted, or their conduct procured in a state of celibacy. Although the nuptial tie may be followed by some pains ; yet the opposite state has few pleasures ; and therefore the infelicities of marriage are not to be urged against its institution. It is a state which affords an equal opportunity of satisfying either hatred or love ; and from the behaviour of many married persons to each other, we may perhaps, reasonably conclude that some seek the indulgence of the former passion only. Modern wedlock may, indeed, be said rather to divide than unite ; for if it brings

people together for a time, it is only to separate them more effectually ; as according to the principles of action and reaction, where two bodies are drawn together by violent attraction, they immediately fly off and are driven back again from each other, by the principle of repulsion. Therefore when we see the avaricious and crafty taking companions to their tables and their beds without any inquiry but after acres of earth, or bags of gold ; or the giddy and thoughtless uniting themselves for life to those whom they have only seen by the light of tapers, and whose dispositions they merely know by hearsay ; when parents make bargains for children without consulting their inclinations or wishes, or even inquiring after their consent ; when some marry for heirs apparent to disappoint their presumptive heirs ; others throw

themselves into the arms of those for whom they possess no tenderness, because they find themselves rejected where they were most solicitous to please; when some marry because their servants cheat them; some because they squander their own money; some because their houses are inconvenienced with company; some because they will live like other people; some because they are sick of themselves; some marry for a nurse; some for a home; some to disappoint their relatives; others to benefit their indigent relations; some because they are impatient of the restraint of a parent or guardian; some upon a sudden and hasty resolution and without any motive; and others whose feelings are callous, though their persons may be fascinating and attractive, but their tender sensations are so glacial that they are fixed as in a

frost ; we need not be so much surprised that marriages are often unhappy, as that matrimony appears so little loaded with calamity ; and we cannot but conclude, that society has something in itself eminently agreeable to human nature, when we find its pleasures so great, that even the ill choice of a companion for life can hardly overbalance them. Those, therefore, of the above description, who should rail against wedlock, should be informed that they are neither to be astonished or repine, that a contract begun on such principles, or with such intentions or dispositions, ended in disappointment and remorse.

“ But happy they, the happiest of their kind !

“ Whom gentler stars unite ; and in one fate

“ Their hearts, their fortunes, and their beings blend.”

It is often the source of connubial misery where one of the parties is previously attached to a third person, and though it may not be in the power of every one to intermarry with those whom they prefer, it is to avoid marrying at all ; and it is their own folly if they join themselves to those whom they do not esteem while they have any secret attachment or engagement to another : and thereby they are not only guilty of unpardonable deception, but they wilfully destroy their own and another's comfort, and involve both in irreparable sorrow and inextricable difficulty. We cannot admit that such preattached and pre-engaged party can, by the laws of nature or divinity, be strictly considered the husband or wife of the person with whom they marry ; and we submit to the divines, whether such parties do not by their mar-

riages affirm a falsity in the most sacred manner, and afterwards live in a state of sin, notwithstanding their compliance with the form. For it may be justly remarked that upon the law of nature (dictated by the Almighty), and the divine law (which is part of it), depend all human laws : and with reference to the Supreme, we submit that a breach of the spirit of the first, will not be excused by compliance with the letter of the last. And it may also be observed, that it is not

——“ The coarser tie of human laws,
“ Unnatural oft, and foreign to the mind,
“ That binds their peace ; but harmony itself,
“ Attuning all their passions into love.”

But the noble simplicity of this excellent law of nature, has not forbidden human legislators to regulate the solemnity of marriage by positive institutions ;

which are venerable and obligatory where they are not repugnant to the law of nature, and intended only as comments and explanations. If man were to live in a natural state, unconnected with other individuals, there would be no occasion for any other laws than those of nature and of God. But he was formed for society : and is neither capable of living alone, nor has courage to do so. Therefore every good man ought to perform the laws of his country, and exert his power to compel others to obey them ; for in every law positive well made is somewhat of the law of reason and of the law of God. However, as to matrimony, it may (and we trust without offence to the strict disciplinarians) be said, that by the law of nature nothing more is required than the free consent of the parties : the moment this has

taken place, the engagement is registered in heaven, if there is no other reason to the contrary than the want of ceremony. The marriages of our forefathers, (which it does not become us to censure) were contracted with no other form. Nevertheless, we admit the necessity and propriety of the marriage ceremony when the parties are mutually disengaged from any precontract or preattachment. Indeed it is indispensable ; for it is not that which we find fault with, much less condemn, but the uses and purposes, which some individuals, from mistaken or improper notions, frequently make of it. We should regret if we were the cause of fewer marriages, as many worthy characters receive a paltry addition thereby to their inadequate incomes ; but policy or humanity (we will not cavil about a word), has recently some-

what bettered their prospects. It is of great importance to the order of society that the nuptial tie should be a contract for life ; and this seems to be the precept of the law of nature : the perpetual obligation which it imposes upon husband and wife, reciprocally to love each other, is an indication that the union was intended to continue till it was dissolved by death ; so that the positive laws which have appointed the solemnities of the engagement, only enforce the natural law with respect to its perpetuity ; by adding a new sanction to the obligation, they render the dissolution of it more difficult. It may be further noticed, that a marriage contracted without tenderness is a kind of rape ; for to possess when the mind does not consent is to violate the laws of nature, of which the gospel is declaratory, and contains the

fair copy of them purged from the corruptions that obscured their beauty. We are very apprehensive, that many persons may justly ascribe their misery in the married state solely to their intermarriage with those who were previously, and at the time of the contract attached to another; which, if of a Platonic sort, it is rarely (if ever) removed by the possession of one to whom they are indifferent: to avoid the latter evil, we should choose the temperate, but prefer the torrid to the frigid disposition. What can prompt such persons to be guilty of deceit in a case where their future comfort is put in jeopardy, and whereby they plunge others into an unhappy condition for life, we cannot imagine; unless they weakly or wickedly consider the ceremony and sanction of marriage, either of such efficacy as to supply the want of the

most essential defect, or as a license for every thing they may desire.

“ Happy, did sorrow seize on *such* alone ;

“ Not *prudence* can defend, or *virtue* save :

“ Disease invades the chastest temperance,

“ And punishment the guiltless.”——

Whatever may be the motives antecedent to such engagements, custom has given a charm to wedlock, which often changes the colour of our actions, and renders that behaviour not improper, which in a state of celibacy would be considered scandalous. It has (notwithstanding the original intentions may be pure) made the marriage promises “ to love, honour, and obey,” also merely ceremonial, and as little binding as the wedding ring, which may be put on or pulled off at pleasure. If giddy and thoughtless youth are so liable to err in a matter of such serious import

as their comfort or sorrow for life, what apology can be made for those parents who being of mature age, and having the advantage of experience, cruelly and impiously usurp a power over the *minds* of their children, and often *force their daughters* into matrimonial engagements contrary to their wishes, and disagreeable to their inclinations ; and thereby drive them into immediate ruin and misery, whom they might make happy ? The selfish and conceited being who, perhaps not disagreeable to some other fair, may possess no attractive qualities in the eyes of the young lady, well deserves the fate expressed in the following lines :

“ Let him, ungenerous, who, alone intent

“ To bless himself, from sordid parents buys

“ The loathing virgin, in eternal care,

“ Well merited, consume his nights and days.”

Experience has shewn the folly of such conduct to those parents whose eyes are not dazzled with titles or property ; but those who are so must consider that

“ He that is rich is every thing that is ;

“ Without one grain of wisdom he is wise,

“ And knowing nought, knows all the sciences.”

How can nature give another the power to direct those affections which she has not enabled even ourselves to govern effectually ? To discharge the duties of wedlock properly is no easy task ; and therefore we should not lay this burthen on any one of the fair sex, and at the same time deprive her of that assistance, which will enable her to undergo it. It is undoubtedly proper, that young persons who are of too tender an age, or too weak a judgment to form a right opinion on so important a sub-

ject, should be *restrained* from contracting an indissoluble union without the consent of their parents or guardians, as they are often attracted by the appearance of virtue, and totally incapable of penetrating into characters. It would therefore be a most flagrant instance of inhumanity to abandon them to the thoughtless temerity common to the inexperience of youth, when they are about to determine by marriage, whether life shall be happy or miserable. Those to whose charge they are by nature committed, may, without incroachment on their rights, prevent them from engaging, or from fulfilling an engagement, if they think it imprudent or disadvantageous. And if other preventative measures fail, they may, at any time and at no considerable expence, make them wards of the high court of Chancery. Those who in-

termarry with such afterwards, will do it at the peril of imprisonment during the ward's minority, and without the prospect of touching a shilling of their property to compensate for the temporary loss of liberty. It must, however, be noted, that a parent or guardian should not exercise such authorities wantonly or capriciously, lest the remedy prove worse than the complaint. Having noticed the most prominent features of unhappy marriages, we now proceed to observe on some of the requisites to happiness in the matrimonial state.

REFLECTIONS ON
18

and conjugal love as more immediately
connected with the rest of this world
Love is a delicacy in sentiments that
distinguishes us from the rest of animals

CHAP. II.

beings, and it is so necessary, that without
it the human soul would soon be extinct.

Reflections on Love and Marriage.

Europe is obliged to this passion for most
of its amusements; the inventions of all
most all recreations being solely to amuse

THOUGH the term love is applied in general to all affections which arise from nature, and which incline the heart, almost involuntarily, towards the object beloved; such as the tenderness of lovers, that of husband and wife, the filial, and much more the parental affection: yet custom has determined it more particularly to signify that strong sympathy which persons of different sexes feel for each other. We shall confine our observations to general

and conjugal love, as more immediately connected with the rest of this work.

Love is a delicacy in sentiments that distinguishes us from the rest of animate beings, and it is so necessary, that without it the human race would soon be extinct. Europe is obliged to this passion for most of its amusements ; the inventions of almost all recreations being solely to amuse the fair sex : indeed the finest inventions are owing to a strong desire to please. If we inquire into the most considerable events we shall find the source of them in love. Were it not for this passion every thing in nature would languish, for it is the soul of the world and the harmony of the universe.

The love of our Creator is productive of a cheerful obedience to his laws ; that of ourselves, when guided by reason and

wisdom, ensures our own happiness ; and that of our fellow-creatures disposes us to fulfil our duty to them strictly.

There is no person but at some time or other may feel the darts of love in the sense before described, but due care should be taken that our passion may prove a blessing to us, and not a torment, and consequently that it be directed to a proper object ; for it produces the happiest effects when it is governed by reason. Heaven gave to man at his creation that bias which inclines him to women ; and the fondness we have for them is a present from the Deity,

“ To raise the virtues, animate the bliss,

“ And sweeten all the toils of human life.”

No pleasure is comparable to that which affects the heart ; nor can any other affect

it with such exquisite delight as the pleasure of reciprocal affection between the sexes. But no solid happiness can be reasonably expected from this passion, except you love with delicacy a person worthy of your tenderest regard ; without this condition you will infallibly be unhappy, either by the inconstancy of the person beloved, or by your own ; and then you will find by experience, that what you thought to be a tender passion was not really so, for that is always constant : your's was nothing more than a conformity of taste for pleasure. Love being the sympathetic bond of two minds, it is in the qualities of the mind that we must search for the foundation of this sympathy. And here the first and principal, and by which indeed we are to judge of all others, is the love of virtue : for there can be no

present more fatal to a man of honor, than a heart that is a stranger to virtuous sentiments; since this he cannot accept without risking his own innocence.

It has the peculiar virtue of rendering the sufferings of two well-paired hearts less acute, and their delights more exquisite. It would seem as if by communicating their distresses, each one felt but half their weight; while on the contrary, their satisfactions are doubled by the participation. The happy pair resists the attacks of trouble and adversity, with more strength and success when they are firmly united. Love is capable of surmounting all obstacles; and there are few hearts in which it does not excite the other passions where once it has got the mastery. It is over the fair sex that it exerts all its prerogatives; 'tis that sex which feels all the

force of its transports and its impulses mixed with tenderness, fear, anger, spite, hope, and jealousy. All these passions reign in the hearts of some women, one while in succession, another time altogether: for it is true that

“The ruling passion, be it what it will,

“The ruling passion conquers reason still.”

It does not debauch virtue directly, but it disguises it so well that it renders it almost useless. We ought not to blush at our being affected with such a tender sensation, since we do but therein conform to the impressions of nature, which have nothing criminal, unless when they are corrupted by our vices and debauchery. Love does not teach a man to rob the dear object of his passion of her most valuable treasure, her innocence; nor to sully her

soul with a crime the most ignominious of all others, adultery : nor does it teach him to plunge the poignard into the unguarded bosom ; or to give the poisonous draught, through excess of tenderness. But it banishes from the mind every sensual idea, every excursion of the imagination, by which the delicacy of the object beloved might be offended were it possible for her to know it : and it intimidates him and holds him in a respectful submission in the presence of his mistress ; and the strongest proof of the sincerity of his affection is, that the perfections he admires makes more impression on his mind than upon his senses. This generous passion, when it is sincere, will not excite us to the commission of any fault which may wound either our conscience or our honor ; for whoever is capable of love is virtuous : and

whoever is virtuous is also capable of love; for all the virtues have a close connection with each other, and the tenderness of the heart is one of them. It has a natural tendency to improve and exalt every virtue; it renders the heart less fierce, the temper more pliable, humane, and generous. It is a gentle settled passion, which does not set men raving, but gives them a concern that is amiable; it does not induce them to take extraordinary pains and fatigue to purchase the favor of the fair on the one hand, and on the other, their appetites are not palled with enjoyment: nor does it tempt them to commit many follies for the sake of the ladies, but then their regard for them is more sincere, as well as lasting. It is founded in nature, on honorable views, on virtue, on similarity of tastes, and sympathy of souls. It is generally grounded

on esteem ; for a man cannot reason himself into it ; but a constant intercourse with an amiable woman will lead him into a contemplation of her excellent qualities, which will insensibly win his heart, and produce all those hopes, fears, and other extravagances, naturally attendant on a true passion. A lover may be a dupe by himself, and believe that he is in love when he is not, but a married man cannot be deceived ; for enjoyment is the touchstone of it. The true from hence derives a new flame ; but the false is here extinguished. When this passion deserts the nuptial state, hatred generally succeeds ; at least coldness and indifference is the best that can be expected, even from tempers of the finest mould. There are no gratifications more permanent than those which flow from the reciprocal return of conjugal

affection ; for then there will be a mutual desire to please, which will quicken endeavour. It will prevent suspicion and jealousy ; and dispose the erring or offending party to make concessions or acknowledgments. When apart it will induce them to shorten absence ; when together, it will be a spring of lasting satisfaction ; they will part with regret, and meet with pleasure. When the heart is mutually affected, then matrimony alleviates every evil, and improves every joy, and creates the alternate desire of making each other happy :

“ For nought but love

“ Can answer love, and render bliss secure.”

To marry wholly on the score of love is an act of great imprudence ; nor is it much more wise to marry where there is none at all. The passions of the men are

most frequently excited by a particular object: before their hearts can be inflamed they must find an object proper to inflame them. But as to the women, the melting softness of that tender sex is inborn; it is an appendage of their frame: they love before they know it. To us love is an amusement; to them, it is a capital affair. It is also said to have this prerogative above ours, it increases by enjoyment; and for this reason the fair sex never experience that satiety and inappetency, which weigh down the hearts of some men when their desires are gratified. Women, in general, love better than men. Nature has purposely imparted to them an almost inexhaustible fund of tenderness, mixed with the most exquisite relish of pleasure, that the consequences of marriage might be rendered less uneasy to them; their suf-

ferings being smoothed, and their pains compensated by the sweet allurements of delight : and these for the most part hold the place of a passion built on reflection. We never love but from choice ; but we frequently see them discover an ardency of affection even to that husband whom they have taken blindfold. But in such cases they are generally free from or dispossessed of any attachment to another. The sacred bond of marriage, strengthens the obligation of a mutual return of affection, and constitutes the duty of it between the husband and the wife, a duty of religion. If you would live happy in the matrimonial state, never enter into it without a reciprocal passion ; and render it genuine and durable by founding it on virtue. If it has no object but beauty, a graceful air, or the bloom of youth, it will be as

frail as these fleeting advantages, and like them it will soon vanish : but if it is fixed by the perfections of the mind, it will then stand the test of time. In order to acquire the right of demanding love, endeavour to deserve it. After an union of some time be as attentive to please, and as careful to avoid offence, as if you were now endeavouring to inspire that passion : for there is as great an advantage in keeping possession of a heart, as in first conquering it. We dare answer for the happiness of that union, where there perpetually reign love, honor, and mutual condescension. But the tie will be weakened by the want of any of these three requisites ; and if the first is wanting, it will be destroyed. It would be too great a task to attempt to trace the infinite number of different scenes which the marriage state would offer to our

view, if the darkness which conceals the secrets of it was suddenly dissipated, or we had the power and penetration of an Asmodeus, what a variety of humours, caprices, freaks, and wild contradictions would so many disunited pairs furnish ; who, so far from being led astray by a false conception of love, have never thought the passion at all necessary to the forming this important engagement? Beauty and coquetry have given birth to so many absurd passions, and to so many troubles, that superficial thinkers, without sparing even that kind of affection which is just and rational, that which is founded on esteem, have dogmatically pronounced it an unpardonable weakness. Those who do not love, and those who hate, ought to be regarded as incorrigible sinners ; it is not, therefore, to these that we address what we

have to say on this subject.—Alas ! the human heart is so variable, that no one can, without presumption, promise that his flame shall always burn with an equal and constant ardour. Love is a fire, and will be extinguished either if water be thrown upon it, or if fuel be not supplied.

Little remains to be said on matrimony. We will briefly observe that a happy marriage has in it all the pleasures of friendship, all the enjoyments of sense and reason, and all the sweets of life ; but love and fortune must both conspire to make it so ; and neither art, deceit, or dissimulation should be practiced by either party. Evenness of temper will give you a sociable companion ; virtue and good sense, a pleasant friend ; love and constancy, a good wife or husband.

Whoever expects matrimonial happiness

from any thing but virtue, wisdom, good humour, and a similitude of manners, (a competency being secured), will find themselves widely mistaken. For vicious habits, capricious humours, and opposite opinions will disturb the best established conjugal affection : and so may the want of ordinary comforts or necessities. But when we see two persons of accomplished minds not only united in the same interests and affections, but in their taste of the same improvements, satisfactions and diversions, and the means provided for securing the luxuries of life, the felicity of matrimony appears superlatively exalted ;

“ Thought meeting thought, and will preventing will,

“ With boundless confidence.”——

CHAP. III.

*Reflections on Modesty, Chastity, Continence, and
Adultery.*

THE indiscriminate use of terms never fails to introduce a confusion of ideas ; therefore modesty and chastity must not be blended ; for there are cases in which the rigour of the former may be abated ; but our obligation to the latter is continual as well as universal, which is the distinguished characteristic of virtue. They are so essentially different, that a woman who would not permit you to see even her arm uncovered, may at the same time burn with

an adulterous flame. Darkness and privacy suspend the necessity of modesty, but that of chastity remains.

Continence is also often confounded with chastity. Persons may be chaste, without obliging themselves to continence, they may also be continent without being chaste. Chastity may be violated even in thought ; but by that alone there can be no breach of continence. All mankind, without exception of circumstance, age, sex, or quality, are under an indispensable obligation to be chaste, but not to be continent. Continence consists in an abstinence from the pleasures of love : chastity in confining these gratifications within the bounds prescribed by the law of nature. The former, though voluntary, has no merit in itself, and becomes meritorious only in proportion as it accidentally con-

tributes to the practice of some virtue or the execution of some generous purpose : for, except in one of these cases, it more frequently deserves censure than commendation. Every one has a right, by the law of nature, to dispose of whatever is his own property. It is not, however, an act of injustice to restrain a minor, a prodigal, or a lunatic, from the exercise of his right, which they would otherwise infallibly abuse : and thus, although the commerce of the sexes is permitted to all mankind, there may be certain circumstances in which it may be expedient to restrain particular persons for a time, in order to procure a greater good. To young persons, continence is certainly a duty till a marriage shall be duly contracted with the consent of parents or guardians, as a private or stolen engagement may easily

be broken ; but when it is entered into in the presence of credible witnesses, confirmed by parental authority, authenticated by the law of the state, and consecrated by religion, it acquires a complicated validity and strength. Besides, the innocent offspring of the unmarried are harshly termed *bastards*, and are often reflected on and reproached by the narrow-minded and ungenerous, although such persons may possibly owe their being to an *adulterous* intercourse, notwithstanding their legitimacy. The members of the human body are intended to remain united to each other so long as the body continues to live : and yet that union, although naturally indissoluble, does not prevent their separation, when any of them mortifies or becomes gangrenous : so without reducing marriage to a mere temporary essay, it

might be proper to permit ill-matched couples in desperate cases, at a certain expence, and on express conditions, to be disengaged from the fatal tie which unites them and misery together. For opposition of temper renders a mutual affection and harmony between husband and wife impossible; and the absolute indissolubility of their contract, so far from engaging them in the exercise of their reciprocal duties, contributes, perhaps, more than any other cause to the breach of them. Dissatisfied with each other, and perceiving their misfortune to be irreparable, they think of nothing but how it may be palliated; and to alleviate their sufferings, they solace themselves, one in the arms of a mistress, and the other in those of a gallant. Hence follows adultery, which next claims our attention.

Adultery is either simple or complex : it is simple when one of the criminal parties is not under the ties of marriage ; it is complex when both are bound by that solemn engagement ; for then each of them is guilty as principal, and also as accomplices in each other's crime : for every one is supposed to commit the offence in which he concurs. Conjugal fidelity is equally incumbent on husband and wife ; and if the latter, by violating it, brings her husband illegitimate heirs, the former may withhold legitimate issue from the wife. Of two faults which are equal in other respects, that is the most heinous by which another is injured ; and if both are injurious to another, that is the most enormous which injures in the greatest degree, or affects the greatest number ; and according to this maxim, the complex adul-

tery is more criminal than the simple, and the simple adultery more so than any other unlawful familiarity between the sexes. It is a direct violation of the pure instincts of nature. To the excess of incontinence and sensuality, which it has in common with the other offences against chastity, must be added injustice, perfidy, and perjury. It destroys the peace of husband and wife, and if their hearts have been united by affection, this, by extinguishing it, divides them for ever. Chastity is the greatest glory and ornament of the fair sex, and most recommends them to the love and esteem of ours; and their adultery is not only an injury to single persons but to whole families, by alienating estates and confounding property. This evil is likely to be oftener the consequence of

the wife's than the husband's infidelity ; for her children will not only risk the loss of their inheritance, but also the affection and protection of a father. The wound which a woman suffers by her husband's offence is but skin deep ; but an unchaste wife, by her adultery, casts an indelible stain on her own offspring ; and her society is avoided by the chaste part of her own sex ; and when dependent, she often becomes an object of distress. In such case, the humane may pity, but seldom relieve her : the rigidly virtuous consign her, without reluctance, to irretrievable ruin ; the worthless part of our sex ridicule her, and the abandoned part of the other hail her a sister of their own, and with fiend-like joy exult in the thought of having gained a proselyte to their own ways. Although

the violation of the law of fidelity is no less sinful in the husband than the wife, yet greater evils happen in society by the guilt of the latter; and it is consequently most injurious, as has in some degree been shewn. The sacred obligations of marriage can be but little understood by the wife who may think herself innocent while she parlies with a lover, or who does not studiously avoid the most distant approaches of one. A virtuous woman, even where her affections are not fixed on her husband, will never admit the idea of another man in the light of an admirer. Ingenuous modesty is the best protection against the familiarities of our sex, and those freedoms that a married woman may at first consider harmless, sometimes end the reverse; for those ladies

who do not defend the first pass, may be unable to defend the last: and therefore it must not be accounted a mark of sense or even prudence, to rely on the resolutions of the mind, when passion often defeats them in less critical cases. It was observed by an admired writer, that “Whether you
“ would lead a woman to ruin, or preserve
“ her from it, the surest way of doing either
“ is by *one of her own sex.*” If this be just, it would be prudent in men who study the good of society, to attend to the *moral* characters of those of the fair sex who may either associate with, or attend upon their wives or daughters, for it is a rule that example is beyond precept, but when both are equally bad, they must be doubly pernicious; and it will be scarcely possible for youth and innocence to escape contamina-

tion. It may, perhaps be said, that the men are the principal cause that the fair sex are not better, for the former set the latter daily examples of capriciousness, inconstancy, and dishonour. A young lady whom her lover abandons, after making a thousand fond vows and the most solemn promises, may imagine that to be false and perjured are no very great crimes, since they do not stain her lover's reputation. A woman who sees her husband commit adultery, and look upon it as no more than a piece of gallantry, may think she has a right to indulge the same inclination. It cannot be denied that too many of our sex think it their prerogative to demand of the other that they should be deaf to the voice of nature, while the men indulge themselves in the privilege of gratifying all

their inclinations : and those very actions which they are guilty of without censure, for ever ruin the characters of the women. It may also be observed that it is ridiculous in men to expose their wives to dangerous trials, and to expect that they should escape without yielding : it is putting them into a slippery path, and demanding that they never make a false step. It is also as great a weakness to torment ourselves with the suspicion of our wives' dishonour ; as it is to give occasion for it. It may here be remarked that for want of listening to the internal voice of nature, which inveighs against adultery, it is generally believed to be but an excusable gallantry, upon the credit of the depraved, who having extinguished all sense of honor and virtue by habitual debauchery, instead of

blushing at this horrid enormity, glory in the commission of it. But pirates and banditti exult also in their violence and rapine, and the foreign grenadier becomes a ravisher without remorse, in a town taken by storm : we are then to determine the turpitude of a particular crime by the opinion of the criminal ! Although the offence of one of the parties cannot be an excuse for that of the other in the sight of the Supreme, yet (thinking as mortals) it may be reasonable to presume that the first who is wilfully and notoriously guilty of adultery, or withdraws privately from the society of their partner, or separates publicly without a very serious and weighty cause, or conducts themselves improperly and violates their engagement, will be burthened with the crime of the other,

who is thereby compulsively placed in such an unpleasant situation. But this we must leave to the divines, and admit that—

———“ 'Tis Heav'n each passion sends,

“ And diff'rent men directs to diff'rent ends,

“ Extremes in nature equal good produce,

“ Extremes in man concur to general use.”

CHAP. IV.

Reflections on the Means of promoting domestic Happiness.

THIS chapter may probably be considered, by some of our polite readers, assuming and dictatorial; we assure such that we lay no claim to puritanism, nor do we mean to dictate to those whose principles and habits have been long fixed by education and reflection. However, as nothing is more essential to happiness than virtue, the first and most important duty of society is to display it in all its

beauty, that it may be seen by all, and by whomsoever seen it may be beloved. Example is best adapted to produce this effect, and it is often the only method in our power: it is a living picture, and every person may give it, by acting like a virtuous man. It is nevertheless a dangerous guide, and never fails to mislead those who implicitly follow it. It is with that, as with advice—we can reap no benefit from it, unless we are qualified to judge of its value.

Unless the examples we propose to ourselves are every way perfect, (and where shall we find such?) while we imitate, nay, though we should in some respects excel them, our attainments must be defective: therefore the good are sometimes hurtful, by limiting us in the exercise of virtue; but the bad are always pernicious, by lead-

ing us into the practice of vice. Therefore as it is the principal regulator of youth, as well as of those who unfortunately feel the want of education and instruction, (indeed those who have been well educated and instructed should rather be grateful to their instructors than proud of their acquirements), and as it is allowed to be of greater force than precept, and to have either a good or evil tendency, it is our bounden duty to shew examples of piety, charity, candour, gentleness, forgiveness, and mutual kindness, in our domestic circles, as an inducement to our children and dependents to imitate them. A father who permits licentiousness in his family, will find his folly severely punished by the disgrace which the vices of his children will bring upon him. A mother's inclination to gallantry and intrigue will con-

taminate the blood of her daughters, and their scandalous adventures will cover her with infamy. Virtue is transmitted from parents to children, with much more ease than the goods of fortune. These are subject to revolutions which the utmost extent of human prudence can neither foresee nor prevent; and to leave riches to base and corrupted minds is to put a sword into the hands of a madman. The seeds of religion, of virtue, and of honor early sown in the heart, take root there, grow strong, and bring forth fruit; their effects are stable and permanent. We will therefore offer a few short sentences on the before-mentioned subjects for example.

On piety we cannot convey our ideas better than in the language of an eminent advocate, who (arguing in a cause of the first consequence wherein religion was

concerned) justly and elegantly observed that he did not mean “the scientific system of tricking, hypocritical, outward, fashionable shew and resemblance of Christian virtue, by a decent appearance without inward spirit:—but that purity of vital principle, which took its root in the heart, and through the heart was infused over the whole moral character, initiated in early youth, growing with its growth, and strengthening with its strength, the incentive to virtue, and the restraint of vice, and which was the best security to the safety of the state.” Indeed it is the surest pledge between the individual members of it. True religion does not cast a melancholy shade on the countenance, but gives it a serene and cheerful appearance, being accompanied with an easy conscience and virtuous sentiments :

nor does it deny the free use of innocent pleasures and diversions ; but allows to a good character whatever is truly valuable in human enjoyment. The world is constrained to pay virtue due homage ; and it is generally thought necessary to assume the appearance of it at least. It is the universal charm : its shadow is courted, when the substance is wanting. The imitation of it is now an art, and the first study, is to learn the speech, and to adopt the manners of candour, gentleness, and humanity. As to charity, it is a virtue of the heart, and not of the hands. Alms are the expressions, not the essence of it. A man may bestow large sums on the indigent without being charitable, and may be so when he is not able to give any thing. It is a habit of benevolence in the soul, which disposes us to the relief and assistance of

such of our fellow-creatures as stand in need of it, in cases where our donations do not contribute to our pride, vanity, luxury, or convenience. It is rather unfortunate for the cause of religion that Christian charity (a virtue too little thought of or attended to) is not so generally conspicuous in the rigid and formal professors, as in many of those who pay less attention to external appearances ; and a critical observer may be led to believe, that some of the most apparently religious people must conceive that their extraordinary sanctity and formality are sufficient for their purpose without either piety or virtue ; and consider the regulation of external conduct as the chief object of their religion, and their duty to be fulfilled if they act their part with decency and maintain a fair character. With respect to candour,

it is a quality essential to every person who would be thought worthy, and consists more in sincerity of heart than in fairness of speech; in liberality of sentiment, than in external courtesy. Its manners are unaffected, and professions sincere; for smiling is the aspect, and smooth are the words of those who are often the most ready to censure, deceive, and injure others. The liberal mind allows for the mixture of evil with good, found in every character. He expects none to be faultless, nor any without some good quality. With defects he can discover a virtue, and in the midst of personal resentment, be just to the merit of an enemy. He commiserates human frailties. and judges liberally, and views men and actions in the sunshine of charity and good nature. With regard to true gentleness, it breathes kindness to

friends, courtesy to strangers, long-suffering to enemies. It governs with moderation, reproves with tenderness, and is benevolent with modesty. It delights to alleviate the distressed mind and to soothe the grieving heart. It is, in truth, the great avenue to mutual enjoyment, as it tempers the violence of contention, keeps alive the seeds of harmony, softens animosities, and renews endearments. Concerning forgiveness, it is a duty which Providence requires under the most awful sanctions, and we should not, by harbouring malice, or meditating revenge, dare to draw upon ourselves the merited vengeance of that Superior, to whose clemency we are compelled to fly. Let him who has never done wrong, be allowed the privilege of remaining inexorable. But let such as are conscious of frailties, consider forgive-

ness a debt which they owe to others. Common failings are the strongest lessons of mutual forbearance. Were this virtue unknown, order and repose would be strangers to human life.

We now come to the last head in this chapter, which we termed mutual kindness, though the word *behaviour* may be more applicable. It may be said, that a great deal of complaisance is requisite on both sides to render the marriage state agreeable. To be obliged by and oblige each other, should be their mutual constant inclination ; and their conduct always should be conformable to good nature as well as good humour. For the last quality (which is too often confounded with the first) is to the mind what beauty is to the body, and a defect in the form is sooner overlooked, than a sourness in the temper ; it

is so amiable a qualification, that every man would be thought to possess it, and the ladies would as soon be accused of an unhappy cast of features as of a perverse turn of mind. Anger sits like blood-shot in the eyes, while good humour lights them up with smiles, and makes every feature in the face charming. But "the eye sees not itself;" for when partiality goes so far as to make us believe those blameable who endeavour to convince us of our being so, it is as absurd to fancy, that the carbuncled nose a man sees in the glass belongs to the figure in the mirror and not to himself. On this subject we submit to our fair readers the following lines:

" Trust not too much your now resistless charms,

" Those age or sickness, soon or late, disarms :

" Good humour only leaches charms to last,

" Still makes new conquests, and maintains the past."

The smiles and sweet compliance of the fair sex are the most convincing arguments to win the heart ; and that in their condition, to yield is the only way to conquer. And while the men are devoting their whole attention, exerting their utmost abilities, and combating innumerable difficulties, for the protection, support, and benefit of the women, the latter should consider it their duty, as it certainly is their interest, so it should therefore be their study, to prevent disorder at home, to make it pleasant to their husbands, to receive them there with chearfulness, and to avoid even the appearance of unkindness, suspicion, or jealousy. Even where they may have real cause for the latter, perhaps their true comfort may be best promoted, by fulfilling their duty strictly, and thereby insure to themselves that inward satis-

faction which beggars description : and if they study their own happiness, they should also regulate their expences not only by their husbands' incomes, but also by their way of thinking, (notwithstanding we consider a good wife has an incontrovertible right to an equal participation of her husband's fortune and enjoyments ;) for prodigals will despise their wives merely for being good economists ; and a niggardly avaricious husband will conceive a disgust for that woman who, thinking more liberally, imagines she ought to regulate their expences by his income.

The folly and ill conduct of some wives is, we fear, very often the cause of making that condition miserable, which a little attention and prudence would make tolerably happy. It is also a matter of much more importance for the fair sex to make

themselves amiable in the eyes of the men *after* they are married to them than before. 'The reason, (says an ingenuous author) why so many marriages are unhappy, is because women employ more pains to make nets than cages.' To conclude this chapter, we will briefly observe that as the Almighty upon his creating man, gave him woman to be his companion, united them in the society of marriage, made him the head of his wife, and established this subordination between them even before they left the innocence of their creation ; it may, therefore, be reasonably concluded, that a husband should govern, and that a wife should submit thereto ; nevertheless, there is a proper mean between ruling like a tyrant and being governed as a child ; for in the first case, the peace and hap-

piness of a family must sometimes be affected; and in the last the order and regularity of it will frequently be inverted.

DOMESTIC HAPPINESS. 25

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CHAP. V.

*Reflections on Separations,—the usual Methods
adopted.—Advertisements,—the Wife's Debts,—
Credit by Tradesmen,—with Advice thereon.*

NOTHING is more seriously to be de-
plored than that violent differences should
very frequently happen between so many
parties under the most sacred and solemn
contract to live in peace and harmony
together; nor any evil affecting society in
general, more to be regretted than that
matrimonial quarrels should so often end
in a total disunion of interests and final

separation of that connection which was intended to continue for life.

We need not be astonished at the multiplicity of such events, when we reflect on the too common causes of such unions ; and which we have attempted to pourtray in the former part of this work. And with the hope of lessening such family misfortunes we have also endeavoured to paint the requisite qualifications to more happy matches in future. It is a lamentable truth that scarce a week passes without advertisements in some of the daily prints, publishing the parting by elopement, adultery, agreement, or otherwise, of some unhappy pair. A much greater number separate without that unnecessary step. By such publications, which many of the middle class resort to, some men appear to excite pity ; others confess their

folly ; many publish their disgrace ; and all tell the rest of the town what has been the unhappy fate of too many before. One reader passes a jest on his neighbour for his misfortune,—another laughs in his sleeve at the jester's fancied security.

The rest of the middle rank as well as the higher order of the married, who resolve to live separate from their respective partners, pursue different courses to accomplish their wishes. Where there is evidence of adultery, and a divorce is sought after, the parties resort to the ecclesiastical court. If such proof is not comeatable, or the parties are not affluent, or privacy is studied, in each case the separation is effected by a *domestic* forum, that is, by mutual concurrence in a deed of separation. This is certainly the most prudent way, as the weakness or miscon-

duct of either party, is kept from public view ; and thereby also a veil is drawn over those faults or imperfections that are merely of a private nature. The inferior class generally settle their family quarrels before a magistrate ; and as such a proceeding is the best adapted to their capacities and circumstances, and is generally assented to, we forbear making any comment thereon. It is indeed to be lamented that necessity should compel any disputing pair whatever to live together in hostility after either of them so far acts the human wild beast as to throw any weapons or other things at the other, but particularly that any couple of the lower order do continue so long near each other as that the death of one of them should be a forfeiture of the other's life, whereby orphans are often left to com-

bat not only distress, but also the unjust reproaches of the vulgar and illiberal on account of the failings of their parents, which it was as impossible for the children to prevent, as it was to be engendered between them. The principal purpose effected by advertising a wife, is exposure and disgrace; but those more frequently fall on the advertiser, as his residence alone generally appears in print. Where such is the intention, in consequence of a woman's abandoned conduct, the advertisement should be differently worded. We decline particularising it, lest it may be improperly made use of: for a man should not resort to it when he is conscious of his own impropriety of conduct towards his wife, as it would be adding insult to injury. Unless express notice of such a publication can be proved

on the party trusting the wife, it will not prevent her contracting a debt which may fall on the husband. And although a tradesman about to give credit to any of the fair sex is not bound to examine the newspapers, or to make inquiries as to what ladies are single, married, or separated, before he sells any commodity; yet if he will risk his goods by a disposition of them to a woman whom he *knows or suspects* to be living *separate and apart* from her husband, or to one who is a *total stranger* assuming to be the wife of any particular man, and on his account, and in either case sends the articles to any other place than the *husband's* actual and notorious residence, he ought to lose the value of them, and he should not, and frequently could not recover the amount from any one. In those unhappy cases of violent quarrels,

between husband and wife, where they are determined to be absolutely separated from each other, (and we conceive it becomes necessary and prudent to guard against any thing worse, when either of them is so far possessed with the devil, and acts the lunatic as to throw china, glass, knives, forks, or other articles at the other), and cannot agree on the terms of separation, we advise such a discordant couple to name a friend on each side to decide between them, and authorise those referees to consult some gentleman in the law in respect thereof, and to instruct him to prepare a deed of separation between them. But if no plan can be thought of to meet the mutual wishes of the interested parties, then they may have recourse to some of those judicial proceedings which we have noticed in the subsequent chapters. And

if the husband be desirous to avoid trouble and expence, and to protect himself against his wife's debts, (so far as any thing short of a settlement of legal alimony or a sufficient indemnity will do so), as well as to prevent her suffering for want of necessities, or being forced by necessity to do any thing wrong afterwards, he should in the mean time until their controversy is finally settled by law, (unless the advice hereinafter given be acted upon) allow her the income which he proposed to do on treaty, and give her some part in advance, and immediately apply to his solicitor to prepare a notice of their separation, and of his allowing her a suitable maintenance, and have a copy of it served on every tradesman to or by whom she is, or probably may be known or trusted, not to

give her credit on his account, and of his determination not to pay. Whether the husband forces his wife to leave him, or she goes away voluntarily, can be proved only by those persons who may be present at the time of their separation, and the validity of any debts contracted by her subsequently, will depend in some measure on proof of the former. But if a man wilfully and designedly, and without cause, turns his wife away without making any provision for her support, he implicitly gives her a claim to credit for necessary food, clothing, and lodging, according to his circumstances, and his notice to the contrary will be nugatory. We cannot help here remarking upon the imprudence of some women, who make themselves and their husbands the subjects of mirth and

ridicule by *constantly* publishing *all* their family differences. On such conduct it may be observed that

“It is a dirty bird that fouls its own nest.”

But in the event of those violent disputes likely to terminate in a separation, before they present the rude front of hostility, we recommend to our fair readers for their own sakes, to consult, and to be guided by the opinions of two sensible, disinterested, and unprejudiced persons ; for those who are sincere will not advise against their consciences, but will venture to displease them, rather than indulge their faults, or increase their frailties.

Many who are now in a state of celibacy may imagine, that when they marry they can effectually guard against or prevent

even the symptoms of matrimonial discord or sorrow; and some tolerably happy married couples, may also flatter themselves that the same unceasing felicity will always continue. The fallacy of such conclusions must be apparent and obvious, if they reflect for a moment, that what with the weakness or depravity of human nature; the instability of sublunary bliss; and the common intercourse with the world; what has happened to or affected one may (indeed will) happen to, or affect another: yet every one persuades himself (though not unphilosophically), or vainly hopes that he shall escape those evils which are more or less common to all. Those who may reasonably expect to do so, must be just and charitable: for true happiness can only be procured by observing the laws of eternal justice, which are insepa-

rably interwoven with it : and to produce the former they must obey the latter. Besides every man's felicity depends more upon his own mind, than upon one or even upon all the external things together ; for when we are unskilled in the art of extracting comfort from the objects around us, our ingenuity solely appears in converting them into misery ; and self-created sorrows, though imaginary in the cause, are not so in the suffering, but equal those human evils endured from real calamities. And no man can be considered truly happy

“Till he thinks on earth

“There breathes not a more happy than himself.”

CHAP. VI.

An Epitome of the Law of Marriage, shewing who may marry,—the Requisites to a valid Marriage,—what are void,—and the relative Powers of Husband and Wife.

THE common law considers marriage as a civil contract. The holiness of it is left to the ecclesiastical law. The temporal courts not having jurisdiction to consider unlawful marriages as a sin, but merely as a civil inconvenience. The punishment of annulling incestuous and other

unscriptural marriages, is the province of the spiritual courts. As a civil contract all marriages are valid where the parties are willing and able to contract and do contract by the usual solemnities. The disabilities of marriage are precontract, consanguinity or relation by blood, and affinity or relation by marriage, and some particular bodily infirmities. It being sinful in the parties to contract matrimony together, they are properly the objects of ecclesiastical censures, to separate them and inflict penance for the offence. Yet such marriages are not void, but voidable, and are valid for all civil purposes, unless separation is made during their joint lives. If, therefore, a man marries his first wife's sister, the bishop's court may, during their lives, annul the marriage, bastardise their issue, and punish them for incest.

These canonical disabilities being the province of the ecclesiastical courts, our books are silent upon the subject. The prohibited degrees by statute are all which are under the fourth degree of the civil law, except in the ascending and descending line ; but between collaterals, all who are in the fourth are permitted to marry, as first cousins, nephew and great aunt, niece and great uncle : and though a man may not marry his grandmother, he may marry her sister. The same degrees by affinity are prohibited. The husband and wife being considered one flesh, those who are related to the one by blood, are related to the other by affinity. Therefore a man after his wife's death cannot marry her sister, aunt, or niece. But two brothers may marry two sisters, or a father and son a mother and daughter : or if a brother

and sister marry two persons not related, and the brother and sister die, the widow and widower may intermarry ; for although I am related to my wife's brother by affinity I am not so to my wife's brother's wife. The other sort of disabilities make the marriage contract absolutely void. The first, is a prior marriage, or having another husband or wife living ; in which case besides the penalty as a felony, the second marriage is void, polygamy being condemned both by the law of the New Testament, and the policy of all prudent states, especially in northern climates. There are five cases excepted, in which such second marriage, though in the three first it is void, is yet no felony. 1. Where either party has been continually *abroad* for seven years whether the party in England hath notice of the other's being living or no.

2. Where either of the parties hath been absent from the other seven years *within* this kingdom, and the remaining party hath had no knowledge of the other's being alive within that time. 3. Where there is a divorce *a mensa et thoro* by sentence in the ecclesiastical court. 4. Where the first marriage is declared void by any such sentence, and the parties loosed *a vinculo* ; or, 5. Where either of the parties was under the age of consent at the time of the first marriage, for in such case the first marriage was voidable by the disagreement of either party, which the second marriage amounts to. The next legal disability is want of age ;—therefore if a boy under fourteen, or a girl under twelve years of age, marries, this marriage is only imperfect ; and when either of them comes to the age of consent, they may disagree

and declare the marriage void, without any divorce or sentence. If either the husband or wife in the last case, be of years of discretion and the other not, either of them may disagree when the latter comes to years of discretion. Yet where there are mutual promises to marry between two persons, one above the age of twenty-one and the other under that age, the first is bound by the contract, and on the side of the minor it is voidable; and the minor only can afterwards maintain an action and recover damages for the breach. Another incapacity arises for want of consent of parents or guardians. A heavy penalty is laid on every clergyman who marries a couple either without publication of banns (which may give notice to parents or guardians), or without a licence, to obtain which the consent of parents or guar-

dians must be sworn to. Whoever marries a woman child under the age of sixteen years, without consent of parents or guardians, shall be subject to fine and five years imprisonment: and her estate during the husband's life shall be enjoyed by the next heir. All marriages celebrated by license (for banns suppose notice) where either of the parties is under twenty-one, (not being a widow or widower, who are supposed emancipated), without the consent of the father, or, if he be not living, of the mother or guardians, are absolutely void. To illustrate this, the party under age marrying by license, if a minor, and not having been married before, must have the consent of the father, if living; but if he be dead, of a guardian of his person, *lawfully appointed*; if there be no such guardian, then of the mother if she is

unmarried ; if there be no mother unmarried, then of a guardian appointed by the court of Chancery. A provision is made, as in the civil law, where the mother or guardian is not of sound mind, beyond sea, or unreasonably froward, to dispense with such consent at the discretion of the Lord Chancellor ; but no provision is made in case the father should labour under any mental or other incapacity, yet it is reasonably to be presumed, that the Chancellor would, under the words of the marriage act, think himself enabled to consent for a father whose consent it was impossible to obtain. A fourth incapacity is want of reason ; without a competent share of which, as no other, so neither can the matrimonial contract be valid. The marriages of lunatics and persons under phrenzies (if found lunatics under a commission,

or committed to the care of trustees by any act of parliament) before they are declared of sound mind by the Lord Chancellor or the majority of such trustees, are totally void. Lastly, the parties must not only be willing and able, but must contract in due form of law, to make it a good civil marriage; it must be celebrated in some church or chapel where banns have been published, unless by dispensation, and be preceded by publication of banns or by license. Many other formalities are necessary, the neglect of which, though penal, do not invalidate it. It is essential to a marriage that it be performed by a person in orders, though the intervention of a priest to solemnize this contract is not according to the natural or divine law. Any contract made in words of the present tense, and, in case of cohabitation, in words

of the future also, between persons able to contract, was, before a late act of parliament, deemed a valid marriage to many purposes : and the parties might be compelled in the spiritual courts to celebrate it in the face of the church. And if either party had afterwards married, this, as a second marriage, would have been annulled in the same courts, and the first contract enforced. But as this pre-engagement can no longer be carried into effect, it may be considered as no impediment to a subsequent marriage solemnized and consummated. However, this must be determined by the canonists.

It is said that Pope Innocent the Third was the first who ordained the celebration of marriage in the church ; before which it was totally a civil contract ; hence arose

dispensations, licenses, faculties, and other remnants of papal extortions, which continue to this day. In the time of the grand rebellion, marriages were performed by the justices of the peace, and were declared valid without fresh solemnization by a subsequent statute. Upon the whole, no marriage by the temporal law, is void that is celebrated by a person in orders—in a parish church, or public chapel, (or elsewhere by dispensation)—in pursuance of banns or a license—between single persons—consenting—of sound mind,—and of the age of twenty-one years—or of the age of fourteen in males and twelve in females, with consent of parents or guardians, or without it in case of widowhood. And no marriage is voidable by the ecclesiastical law, after the death of either of the parties

nor during their lives, unless for the canonical impediments of pre-contract, if that indeed still exists ; of consanguinity ; and of affinity, or corporal imbecility, subsisting before marriage. The husband and wife are one person in law ; the legal existence of the woman being suspended during the marriage, or consolidated into that of the husband, under whose protection and *cover* she performs every thing ; and is called in our law French, a *feme covert*, and is under the influence of her husband, her baron, or lord, and her condition is called her *coverture*. In the civil law husband and wife are considered as two distinct persons ; may have separate estates, contracts, debts, and injuries : and therefore in our ecclesiastical courts, a woman may sue and be sued without her

husband. A feme covert having a separate estate, may, in a court of equity, be sued as a feme sole, and be proceeded against without her husband; for in respect of her separate estate, she is looked upon as a feme sole; and in a court of equity, baron and feme are also considered as two distinct persons, and therefore a wife by her *prochien amy* may sue her own husband. A man (by the old law) might give his wife moderate correction. But this was confined within reasonable bounds. As this power is now doubtful, a wife may have security of the peace against her husband; or, in return, a husband against his wife. The lower rank of people, however, still claim and exert their ancient privilege; yet some of the men outstep all reasonable bounds; and some

women undeservedly and patiently endure it. The courts of law will still permit a husband to restrain a wife of her liberty in case of any gross misbehaviour, but not to imprison her.

THE LAW OF MARRIAGE

women undressedly and publicly embrace
The courts of law will still permit a
husband to restrain a wife of her liberty
in case of any gross misbehavior, but not
to imprison her.

CHAP. VII.

*An Epitome of the Law of Divorce, shewing when
it may be obtained,—when Alimony is allowed,
and the Husband bound thereby,—and Notes
of judicial Decisions in Illustration.*

THERE are two kinds of divorce, the one
total, the other partial; the one *a vinculo
matrimonii*, from the very bond of mar-
riage; the other merely *a mensâ et thoro*,
from bed and board. The total divorce,
a vinculo matrimonii, must be for some of
the canonical causes of impediment before

mentioned ; and those existing before the marriage, as is always the case in consanguinity ; not arising *afterwards*, as may be the case in affinity or corporal imbecility. The latter will not vacate the marriage, because there was no fraud in the original contract ; but no kindred by affinity can happen subsequently. In cases of total divorce, the marriage is declared null, as having been absolutely unlawful *ab initio* ; and the issue are considered illegitimate, or (*as the law harshly calls them*) bastards. Divorce *a mensâ et thoro*, is when the marriage is lawful *ab initio*, and therefore the law is tender of dissolving it ; but for some cause happening consequently it becomes improper or impossible for the parties to live together, as in the case of intolerable ill temper or adultery.

For the canon law, which the common law follows in this case, deems with such mysterious reverence of the nuptial tie, that it will not allow it to be unloosed for any cause arising after the union is made. The divine revealed law assigns incontinence as the only cause why a man may put away his wife and marry another. The civil law allows many causes of absolute divorce, as if a wife goes to the theatre or ~~the~~ public games, without the consent of her husband, but adultery is the principal. In England adultery is only a cause of separation from bed and board; for if divorces were allowed to depend upon a matter within the power of either of the parties, they would probably be extremely frequent. A husband cannot obtain a divorce in the ecclesias-

tical courts for the adultery of his wife if she recriminates, and can prove that he also has been guilty of it. Divorces *a vinculo matrimonii*, for adultery, have latterly been granted by act of parliament; but to prevent fraud and collusion, the two houses examine witnesses as to the adultery of the wife, and require that the husband should have obtained a sentence of divorce in **the** spiritual courts, and a verdict with damages in a court of law against the adulterer. This is not a standing order of the house of lords, it may be dispensed with where the circumstances are such that the adultery of the wife can be proved by satisfactory evidence, and at the same time it is impossible for the husband to obtain a verdict in an action at law. It was so done in the case of a na-

val officer whose wife had been brought to bed of one child, in his absence upon duty abroad ; and upon his return was far advanced in her pregnancy with a second, and where he could not discover the father. So in another case, where a married woman had gone to France, was divorced there, and had married a Frenchman. It would also be dispensed with if the adulterer should die before the husband could obtain a verdict. In case of a divorce *a mensa et thoro*, the law allows alimony or separate maintenance to the wife : which is an allowance usually made to the woman for her support out of the husband's estate ; being settled at the discretion of the ecclesiastical judge, on consideration of all the circumstances of the case. If he refuses payment thereof, there is (be-

sides the ordinary process of excommunication) a common law writ to recover it. It is generally proportioned to the rank and quality of the parties. But in case of elopement, and living with an adulterer, the law allows her no alimony. It may be here observed, that the husband is bound by law to provide his wife with necessities ; and if she contracts debts for them, he is obliged to pay them : but for any thing besides necessities, he is not chargeable. What are so, must be ascertained by a jury from the rank and circumstances of the husband. If a husband gives notice to a tradesman not to deal with his wife, unless she brings ready money, an action cannot afterwards be maintained even for necessities. Neither is he chargeable for such, if the wife

elopes and lives with another man, and the person who furnishes them knew it. It is held that where a wife has a separate maintenance, and lives apart by agreement, the husband will not be liable, for this is equivalent to notice to the public not to trust her upon his credit; and where she has consented to support herself upon a certain allowance, what she procures beyond upon the credit of her husband, could not be considered as *necessaries* for her in that condition. It is an ancient maxim of the law of England, that no person shall be permitted to perish for want in this country: if, therefore, a married man abandons the society of his wife, any person furnishing her with necessaries according to her rank and degree in life, has a right to recover from the husband, by an

action at common law, the money he has expended for the maintenance of the wife. But if a wife voluntarily leaves her husband, and will not return, such an action would not be encouraged; as it might enable one man to injure another under the colour of justice; first by inducing the wife to leave her husband under some false suggestion; and secondly, by supplying her with necessaries, and bringing an action to recover the amount; although perhaps secretly living with her in adultery. If an insolvent man, or one in a low situation of life leaves his wife through necessity, or urgent distress, and the wife having a knowledge of his residence, refuses to follow him, such an action would not be entertained; particularly if she had any means of procuring her

support; because a wife should share the fate of her husband, whether in indigence or affluence, while she depends upon him for her maintenance.

CHAP. VIII.

*Notes on judicial Decisions touching Separation,—
Alimony,—Debts of the Wife,—Elopement,—
Adultery,—and Divorce.*

1. **I**f a husband's bad conduct compels his wife to leave him, equity will in some cases decree her a separate maintenance.

2. If husband and wife separate, and he agrees that she shall have an annual allowance, equity will enforce it.

3. Upon separation it was agreed that the husband should return his wife's por-

tion to her father, who should maintain the wife and child, and indemnify the husband. This was established in equity, though the husband offered to take them back.

4. A wife who was compelled by hard usage to leave her husband, was decreed the interest of her portion till cohabitation.

5. A woman being ill used by her husband became intitled to a considerable sum of money ; which was decreed to be invested, and the interest paid to the wife separately for life.

6. Though the court of Chancery cannot decree alimony or a separation, it can enforce articles entered into ; but if the parties come together again, they are no longer binding.

7. Where a man deserted his wife, and went abroad, having assigned his property

the court decreed her maintenance out of the estate assigned, though she had a separate income. In a suit for alimony, separate maintenance or pin-money is not a good plea.

8. A husband left his wife and children and the country for several years. The wife, on her mother's credit, maintained herself and children. The husband, on his return, seized the wife's goods and stock in trade. It was held that what the wife had acquired in his absence was her separate property, and not liable to his disposition.

9. A man having possessed himself of great part of his wife's fortune, and left the kingdom, the interest of her trust-money was directed to be paid to her till he returned and maintained her.

10. A wife cannot have maintenance

where there is proof of her elopement and adultery.

11. In some instances where the husband has offered to cohabit with his wife, and use her kindly, equity has refused to continue her separate maintenance, though after a decree.

12. The court will not establish an agreement between husband and wife to live separate.

13. Where a man compels his wife to execute a deed of separation, allowing a maintenance inferior to her rank and fortune, equity will decree a proper maintenance.

14. Bill in equity by a wife for the performance of an agreement, and for alimony, she being compelled by her husband's cruelty to leave him. The court ordered her 500*l.* to carry on her suit.

15. Articles of separation, by which the husband was to pay his wife 100l. per annum, were decreed to be performed, though he offered to receive her again.

16. The spiritual court has exclusive cognizance of the rights and duties of marriage; equity has no jurisdiction upon a contract for separation simply, but the jurisdiction holds in special cases, as where a third person covenants to indemnify the husband against the wife's debts, or a fortune accrues to the wife after a separation, or the property is the subject of the trust.

17. A wife living apart from her husband, and having a separate maintenance, cannot bind him by her contract.

18. A wife divorced, *a mensa et thoro*, forfeits her right to her widow's chamber under the custom of London.

19. The husband, by law, has the custody of his wife, and may confine her, but he cannot imprison her; if he does, it will be a cause for a divorce, *propter sævitiam*.

20. Where a wife sues for a specific performance of her marriage articles, her elopement with an adulterer is no bar.

21. A jointure is not forfeited by elopement, but dower is by the statute.

22. Bill in Chancery by a wife against her husband for a separate maintenance, charging that she had behaved with duty and respect. The husband insisted that she had not behaved with that duty and affection which became a virtuous woman. Lord Chancellor said, that the virtue of a woman does not consist in her chastity only, for she may be guilty of cruelty, and in this case she had beat her husband; a woman

too may be guilty of gaming and extravagance, which is not virtuous.

23. Equity will not allow a wife maintenance after full proof of her elopement and adultery.

24. The obtaining a *supplicavit* does not justify a wife's elopement.

25. If a wife elopes without cause, and refuses to return, equity will not assist her in recovering her separate property.

26. A wife's contract binds the husband from his presumed assent only, not where he expressly dissents before hand; if a woman takes up materials and pawns them before they are made into clothes, her husband is not liable. Warning a servant usually employed by a tradesman is a sufficient warning to the master.

27. A man who turns away his wife without cause, and refuseth to provide for her, cannot make a particular prohibition.

28. Where the wife goes away with an adulterer, the husband cannot be charged for necessaries.

29. A husband is not chargeable for goods sold to an adulterous wife.

30. Husband is not liable for necessaries of the wife, after elopement notorious, unless he takes her again.

31. A woman cannot charge her husband after notorious separation, by consent, with separate allowance.

32. A wife having lived in a lewd manner while with her husband, leaves him, and afterwards sends to him to receive her or allow her a maintenance; he tells her she should live in his garret, and refuses her a maintenance: he is not answerable for her debts.

33. A second husband is liable for debts contracted by his wife while she was living in a state of separation from her first husband,

and had a separate maintenance. *This should make a man very shy in marrying such a woman, as she may have borrowed money and obtained credit under the sanction of her first husband's name and circumstances.*

34. A husband is not bound to receive his wife, nor is he liable to pay for necessities found to her after she has committed adultery, though he has before been guilty of it, and turned her out of doors without any imputation on her conduct.

35. A wife having committed adultery, the husband left her in his house with two children bearing his name, but without making any provision for her; she continued in a state of adultery: it was held that the husband should be liable for necessities furnished to her, unless it appear that the plaintiff knew or ought to have

known the circumstance under which she was living.

As each of the decisions mentioned in this chapter were made on consideration of the merits, which the most attentive observer may, from the brevity of the statements, mistake; the reader who may be interested or affected, will do well to consult a professional gentleman on his own individual case.

CHAP. IX.

*Notes on judicial Decisions concerning the Power
of a Wife over her separate Property.*

1. **A FEME COVERT** saves money out of her separate estate, she may dispose of it as a feme sole.

2. It was agreed before marriage, that the husband should have a certain part of the wife's estate, and that she should dispose of all the rest. A considerable sum fell to the wife after marriage. Held, that she should have the disposal of it.

3. After marriage the wife took a real estate by descent, when they conveyed it to trustees, in trust, to permit the wife to dispose of it as she pleased. By frugality she saved a large sum, which she bequeathed to her nieces, having no children. Decreed, the money well disposed of.

4. Articles between husband and wife are good without the intervention of trustees, for *femes covert* having separate estates, are considered as *femes sole* as to such estates, and they have an absolute power of disposition notwithstanding their coverture.

5. Where a husband was attainted of felony, and pardoned on condition of voluntary transportation, a personal estate, which came afterwards to the wife, was decreed to belong to her as a *feme sole*,

and was ordered to be paid to her second husband.

6. Where a personal estate is given to a married woman for her separate use, she may dispose of it as a feme sole, and all that accrues ; if above the age of seventeen.

7. A feme covert is a feme sole so far as the instrument creating her separate estate makes her proprietor ; and if she pledges it according to her power, the trustees must hold to the uses she appoints. But this rule does not extend to transactions with the husband.

8. A wife having a separate maintenance, may dispose of her savings by will.

9. The estate of a deceased husband is liable to pay the funeral charges of a wife having a separate maintenance.

10. Though a man is bound to maintain his wife and children, yet his funds are liable to creditors ; and the decrees of the spiritual court for alimony cannot affect the husband's estate as against creditors, but the person of the husband only.

11. In cases of separate maintenance, the courts of equity are guided by judicial determinations, and not by private judgment.

12. Money earned by the wife living separate, shall go towards her maintenance.

13. Though a wife has power to make a will, yet the husband shall have administration.

14. The wife of a man who is under an absolute disability of coming into this country, may be sued as a feme sole ; at least the writ is unexceptionable after verdict.

15. A wife may plead without her husband where he is transported, for it is a temporary death.

16. A will made by a married woman in pursuance of a power reserved before marriage, when the husband did not execute the deed, is not properly a will, nor provable by the ordinary.

17. A separate maintenance, payable quarterly, at the end of each quarter, is to be apportioned at the death of the wife.

18. A wife eloping from her husband, and running in debt, cannot be sued alone.

19. Nor a woman parted by consent, and having a separate maintenance.

20. A wife being a sole trader in London, is liable to a commission of bankrupt, and her assignees shall come in paramount.

the assignees of her husband, though his was the prior bankruptcy.

21. Where credit has been given to the wife of a man in exile, she alone is liable.

22. So where the husband has abjured the realm, or is transported.

23. Where a wife has a separate estate, and acts and receives credit as a feme sole, she shall be liable as such.

24. A feme covert cannot sue without her husband, as a sole trader, by the custom of *London* in the superior courts at *Westminster*.

25. The husband (a foreigner) residing abroad, and the wife trading and obtaining credit in this country as a feme sole, it was held that she was liable for her own debts.

26. A feme covert cannot in general

cases be sued alone on promises made by her, except by the custom of *London*.

27. Where a feme covert, sole trader, gave a bond and warrant of attorney to enter up judgment, on which the plaintiff afterwards took out execution, the court set the judgment aside, as entered up without authority, on the motion of the assignees of the wife (who had become bankrupt), with the consent of the husband.

28. It has now been solemnly determined, that a *feme covert* sole trader in the city of London, is not liable to be sued as such in the courts at *Westminster*; and even in the city courts, the husband must be joined for conformity.

29. After two arguments before all the judges, the court declared it to be their opinion, that a feme covert living apart from

her husband, having a separate maintenance secured to her by deed, cannot contract and be sued as a feme sole ; in fact that by no agreement between a man and his wife, can she be made legally responsible for the contracts she may enter into, or be liable to the actions of those who may have trusted to her engagements as if she were sole and unmarried.

The observation at the conclusion of the last preceding chapter is equally applicable to this. By the last decision in this chapter, and by other parts of these sheets, the ladies will readily perceive how much they are the favorites of the laws of this country.

CHAP. X.

A brief Account of the Civil Law, and of the spiritual Courts,—and their Jurisdiction in matrimonial Causes.

As the civil law, and the ecclesiastical courts and their jurisdiction, are little known and less understood by the public, we deem it necessary to give the reader some account of them, in order that he may more readily comprehend other parts of this work.

The civil law is ranked as the third branch of the unwritten laws of this country; containing certain particular laws, which by custom are adopted and used only in certain peculiar courts of pretty general and extensive jurisdiction. And by these must be understood the civil and canon laws of this country. By the civil law, absolutely taken, is generally understood the civil or municipal law of the Roman empire, as comprised in the institutes, the code, and the digest of the Emperor Justinian, and the novel constitutions of himself and some of his successors. The canon law is a body of Roman ecclesiastical law, relative to such matters as that church either has or pretends to have, the proper jurisdiction over. This is compiled from the opinions of the ancient Latin fathers, the decrees of general

councils, and the decretal epistles, and bulls of the holy see. There is also a kind of national canon law, composed of legatine and provincial constitutions, and adapted only to the exigencies of this church and kingdom. At the dawn of the reformation, in the reign of King Henry the Eighth, it was enacted in parliament, that a review should be had of the canon law; and, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And which statute was revived and confirmed by a statute of Queen Elizabeth. And as no such review has yet been perfected, upon these statutes now depend the authority of the canon law in England.

THERE are four species of courts in which the civil and canon laws are permitted (under different restrictions) to be used, namely, the courts of the archbishops and bishops, and their derivative officers, usually called in our law courts christian, or the ecclesiastical courts, the military and admiralty courts and the courts of the two universities. In the three first, their reception in general, and the different degrees of it, are grounded upon custom. The courts of common law have the superintendancy over those courts, to keep them within their jurisdictions, to determine wherein they exceed them, to restrain and prohibit such excess, and (in case of contumacy) to punish the offender who executes, and in some cases the judge who enforces, the sentence so declared to be illegal. If these courts either refuse to

allow those acts of parliament which concern their extent, or the matters before them, and will expound them in any other sense than what the common law puts upon them, the king's courts at Westminster will grant prohibitions to controul them. An appeal lies from all these courts to the king, in the last resort; which proves that their jurisdiction is derived from the crown. And from these strong ensigns of superiority, it appears that the civil and canon laws are only subordinate; and that thus admitted, restrained, altered, new-modelled, and amended, they are inferior branches of the customary or unwritten laws of England.

Matrimonial causes, or injuries respecting the rights of marriage, are a branch of the ecclesiastical jurisdiction. The Romanists having very early converted

the marriage contract into a holy sacramental ordinance, the church, of course, took it under her protection, upon the division of the two jurisdictions. And in the hands of such able politicians, it soon became an engine of great importance to the papal scheme of an universal monarchy over Christendom. The numberless canonical impediments that were invented, and occasionally dispensed with, by the holy see, not only enriched the coffers of the church, but gave it a vast ascendancy over princes of all denominations; whose marriages were sanctified or reprobated, their issue legitimated or bastardized, and the succession to their thrones established or rendered precarious, according to the humour or interest of the reigning pontiff: besides a thousand nice and difficult scruples, with which the clergy of those ages

puzzled the understandings and loaded the consciences of the inferior orders of the laity ; and which could only be unravelled and removed by these their spiritual guides. Causes matrimonial are now so peculiarly ecclesiastical, that the temporal courts will never interfere in controversies of this kind, unless in some particular cases. Of matrimonial causes, one of the principal was, when a party contracted to another, brought a suit in the ecclesiastical court to compel a celebration of the marriage in pursuance of such contract ; but this branch of causes is now cut off entirely by a late act of parliament. Another species of these causes, is the suit for restitution of conjugal rights, which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any suffi-

ent reason ; in which case the ecclesiastical jurisdiction will compel them to come together again, if either party be weak enough to desire it contrary to the inclination of the other.

Divorces, also, are causes matrimonial and cognizable by the ecclesiastical judge. If it becomes improper, through some supervenient cause arising *ex post facto*, that the parties should live together any longer ; as through intolerable cruelty, adultery, a perpetual disease, and the like ; this unfitness or inability for the marriage state may be looked upon as an injury to the suffering party, and for this the ecclesiastical law administers the remedy of separation, or a divorce *a mensâ et thoro*. But if the cause existed previous to the marriage, and was such a one as rendered the marriage unlawful *ab initio*, as con-

sanguinity, corporal imbecility, or the like ; in this case the law looks upon the marriage to have been always void, being celebrated *in fraudum legis*, and decrees not only a separation from bed and board, but *a vinculo matrimonii* itself.

The last species of matrimonial causes, is a consequence drawn from one of the species of divorce, namely, *a mensa et thoro*, which is the suit for alimony, a term which signifies maintenance, and which suit the wife, in case of separation, may have against her husband, if he neglects or refuses to make her an allowance suitable to their station in life. This is an injury to the wife, and the court christian will redress it by assigning her a competent maintenance, and compelling the husband by ecclesiastical censures to pay it. But no alimony will be assigned in case of

a divorce for adultery on her part; for as that amounts to forfeiture of dower after his death, it is also a sufficient reason why she should not be a partaker of his estate when living.

PROCEEDINGS BY PAUPERS, &c.

by multiplying suits between individuals
about matters of trifling import, may in
some measure, be questioned. One argu-
ment may be used in its favour, namely,
that justice is done, and in some
cases, in vain offers her assistance to the

CHAP. XI.

*Reflections on Proceedings by Paupers in different
Courts,—and on a Suit in the ecclesiastical
Court, between a necessitous Man and his
Wife,—and its attendant Consequences.*

IT is a maxim that has always subsisted,
that justice ought to be administered with-
out expence to indigent parties, but at
present it is almost reduced to a mere spe-
culative truth. How far such a system
would tend to the peace or advantage of
society, in a commercial country like this,

by multiplying suits between individuals about matters of trifling import, may, in some measure, be questioned. One argument may be used in its favour, namely, that justice in some cases, and in some courts, in vain offers her assistance to the necessitous, if the gate by which alone access to her can be had, is not to be opened but by a golden key not purchasable by *all* those who *must* use it, or *suffer* for the want of it. It is true, that persons swearing themselves not to be worth five pounds are by different statutes, intitled to have original writs and subpoenas *gratis*, and counsel and attorney assigned them *without* fee, and are excused from paying costs when plaintiffs: but when that provision was made to enable the distressed to obtain justice, five pounds was doubtless considered a great sum,

and would answer many calls, it being *upwards of three hundred years ago*; and in all probability, at that period it was sufficient to ascertain a party's right, in any court in this country; but on a moderate computation of the value of money between that and the present time five pounds then may be estimated to be nearly equal to 100*l.* now; besides it must be admitted that if a man is not worth (indeed if he cannot command), a moiety of the last mentioned sum, it is imprudent to risk the event of a suit in the superior temporal, much less in any of the spiritual courts. So that numerous cases must happen where a man may be considerably too affluent to sue or defend *in forma pauperis*, and at the same time too indigent to become plaintiff or defendant otherwise. These are cases very much to be deplored; and as they cannot

be affected or altered by the judges, advocates, practitioners, or officers as such in any of the courts, they can be alleviated or remedied only by legislative interference. A man so circumstanced, may at all times avoid being a plaintiff, though it is mortifying to forego *even the prospect* of welfare. As to the temporal courts he need not, in general, be a defendant, unless he wilfully does wrong, or omits to do what is (or is by the plaintiff considered) right: where an indigent man cannot avoid it, his case is pitiable. So it is in a more serious degree, where he has to defend a suit by his wife for alimony in the ecclesiastical court, when a woman (which is a common case) claims a larger portion of her husband's income than he can pay or that court would decree to her, however meritorious, if the cause came to a final hear-

ing. Hence it may be inferred, that when such a man is worth more than five pounds, and considerably less than is sufficient to prosecute the suit (notwithstanding the great favour shewn to paupers in our courts), he is nearly precluded from defending it, and therefore he is in some measure prevented from doing himself justice, and may, by such a suit, lose his personal liberty without wilfully offending; as will presently appear. The laws of God and man give every party an opportunity to make his defence, if he has any. The Supreme did not pass sentence upon Adam before he was called upon for that purpose. “*Adam,*” says the Almighty, “where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?” And the same question was put to *Eve* also.

And if the marriage ceremony is considered as binding in conscience as an oath, a married woman claiming a larger separate allowance than she *believes* her husband can pay, and proceeding in such a manner for the recovery of it, knowing the expence, must be guilty of perjury with impunity. Be that as it may, it is a very serious thing for a man of inconsiderable fortune or property, or of small income, to be a party in an ecclesiastical cause; for we understand (from good authority) that there are very few suits judicially determined for so little as 300*l.* and that the expences (including the costs on both sides), are demandable from the husband, after every term, during the progress of it; and that the wife may, if some time previously separated, or having no income, occasionally apply to the court for some

thing in advance from the husband, which is generally ordered to be paid in a short time.

The suit for alimony is usually stated to be for cruelty and adultery, and if either can be proved, the court will allow the wife from a fifth to an eighth part of the husband's clear annual income for her separate support; but if she fails in such proof, she gains nothing by the suit, but may probably be ordered to return to him, if he shall require it. On the contrary, if he recriminates, and establishes adultery against her, she will be left without maintenance, as a punishment for her infidelity. In case of sufficient evidence of criminality against *either one* of them, sentence of divorce from bed and board will be pronounced between them; but not so if *both* are guilty.

A proceeding by either party to compel cohabitation is, we conceive, an act so bordering on insanity on the part of the complainant, that we shall make no comment thereon. We must here observe, that notwithstanding a divorce and alimony decreed, if thereafter the husband's circumstances and income are improved, the wife may apply again to the court for a proportionate increase of allowance; or if the husband shall subsequently be reduced in his situation in life, we have no doubt but upon application to the court his wife's stipend would be proportionably lessened.

It may not be improper or unnecessary to acquaint those who may be parties without being affluent, with the effects and consequences of not appearing, not obeying, or not conforming to the process, orders, or decrees of the spiritual court;

therefore, suppose a man does not appear at any time either personally or by his proctor, (which is contempt of court); or cannot pay the costs as demanded, the sums of money ordered on account of maintenance, the gross amount of the expences at the end of the suit; or the alimony decreed to the wife, (which are contempts for non-payment of money); in any of these cases, the greatest sentence that can be, is then passed upon him by the ecclesiastical court, which is *excommunication*:—and that is described to be two-fold. The lesser is an ecclesiastical censure, excluding the party from the participation of the sacraments; the greater proceeds further, and excludes him not only from them, but also from the society of all Christians. By the common law an excommunicated person is disabled to do any of those legal

acts which he might do if not under such a sentence. He cannot serve upon juries, cannot be a witness in any court, and, which is the worst of all, cannot bring an action, either real or personal, to recover his lands or money due to him. He cannot dispose of his estate or property by will; nor as a patron present a clerk to a church, or as a clerk be admitted thereto. And in case of his death we believe that according to the thirty-third article of our religion, he will not be intitled to Christian burial, (this must be dreadful to the *superstitious*!) Nor is this the whole, for if within forty days after excommunication has been published in the church, the offender does not submit and abide by the sentence of the spiritual court, the bishop may certify such contempt to the king in Chancery. Whereupon a writ issues

to the sheriff of the county, to take the offender, and imprison him in the county gaol, till he is reconciled to the church, and published there, and such reconciliation certified by the bishop; upon which another writ issues out of Chancery to deliver and release him.

It would be an act of humanity and justice in the legislature, to remove the incapacity of an excommunicant to be a witness, and to enable him to recover his property, and to make a will; but as to his inanimate remains, God forbid that any notice should ever be taken of such a matter in a British senate. For as to the incapacity of witnesses it is a great obstruction to the administration of justice, and a punishment not intended falls on the persons who require such testimony and the loss may be incalculable. With re-

spect to the suspension of right to recover property, an excommunicant is put into a worse situation than the most fraudulent debtor ; or than even a traitor or felon before conviction. He may be half starved in prison, his children left destitute of necessities, as well as of education, (which last may be considered a *public* evil), and his creditors may be defrauded without any wilful act of his own ; in consequence of the subsequent insolvency of his debtors, or his claims becoming barred by the statute of limitations. And as to his making a will, numerous inconveniences may follow his death without that necessary and prudent act. So that the innocent suffer, and those who are so dishonorable as to withhold any property on account of such incapacity, escape with impunity. If at the dawn of the reformation the legislature

considered some alteration in the ecclesiastical laws proper, how much more necessary is it now, when religious feuds have ceased to exist in *this* country, and superstition is nearly annihilated? It may certainly be allowed to be an object of some importance, and a little change therein might be of public utility; and so far as it concerns the middle class of small property or income, is it not a subject justly claiming attention? "But when fashion," says Locke, "has sanctioned what folly or craft began, custom makes it sacred, and it will be thought impudence or madness to contradict or question it."

There is some difference between the effects of excommunication for contempt of court, and for non-payment of money. In the first case, the party cannot in ge-

neral, go to either the King's Bench or the Fleet prison, and if he does, he is not intitled to have any of the privileges or liberties of them, nor relief by an insolvent act, which are the inconveniences that all prisoners for contumacy of any other court labour under, although they are generally sent to one of those prisons in the first instance. But in the last case, he may go to either of them, and enjoy the advantages thereof, and the relief given to insolvent debtors.

After excommunication, the party cannot be heard by the ecclesiastical court ; and if he is once fixed in strong hold for contempt, there is no way of escape, but by paying what has been ordered and all expences ; otherwise his release will be hopeless. But if the wife then is, or afterwards shall become intitled to property

in the hands of others, more than sufficient for such purpose, which she cannot get at without him, and has no means of support, then his deliverance may be effected by treaty, if he will comply with the terms which may be imposed upon him, and is able to procure two sureties in a large penalty for his faithful performance thereof, after his absolution from the sentence of excommunication, and can find money sufficient to pay the expences incident thereto. It is a serious truth, that some men are induced to comply with the most unreasonable demands, which they cannot fulfil, either at the commencement, to avoid the heavy expence of the suit, or afterwards to preserve or procure their personal liberty. It is equally true, that some women are under the necessity of accepting a very scanty pittance, when

deservedly and justly intitled to a handsome allowance, in those cases where they have no friend to assist them.

We could illustrate these matters, by stating cases of great hardship, but from the depravity of some individuals, and that boundless revenge which so often shews itself in these unhappy cases, and which is inherent in some mortals, we think it most prudent to withhold those particulars, which might gratify curiosity at the risk of peace, and defeat our intention, which is to heal and not to wound, and to prevent rather than to remedy ; for it is an established and a trite maxim, that prevention is better than remedy.

To the affluent, we recommend to proceed in such a suit, but we do not (nor will the civilians) offer such advice to the indigent suitors, we mean such as are not

worth 300l. after their debts are paid, or who cannot spare so much without bankruptcy, or wasting the money to which others have a just claim. Therefore, when no terms of compromise can be settled by treaty after a suit has been commenced, which the proctors in poor cases generally endeavour to effect, we would recommend the latter parties to take the *opinion of the court* upon their case (which we are told is an expence of *only* 40l. or thereabouts) and to abide by it. It is for the mutual comfort of a married couple who cannot agree together, to separate; and it is prudent in the husband, rather to allow his wife a few pounds a-year more than he may think right, than involve himself in ruinous expences, and be driven from his business into confinement or exile; as it is the interest of the wife,

rather than ruin her husband, distress her children, and be left without a shilling, to suit her claim to his income, and accept a smaller allowance, and exercise her industry for the rest that may be necessary for her support ; which a woman should do in those cases where a man's income is small and uncertain, and depends entirely upon his own personal exertions.

CHAP. XII.

*How legal Alimony is settled—the Utility of it—
with a new Plan for settling separate Main-
tenance without ecclesiastical Process.*

GENERALLY speaking, it is true, that the spiritual court alone takes cognizance of matrimonial differences, so as to settle the allowance which a wife ought to have from the husband in the unhappy event of separation; though differing from the temporal courts, we understand, it takes no notice of any prior agreement for, or deed of sepa-

ration between the parties. Legal alimony has been heretofore settled by the ecclesiastical court only, and the settlement of it has been considered the best and most effectual method of protecting a man against his wife's debts or claims.

But a late Lord Chancellor said, "No court has any original jurisdiction to give a wife separate maintenance, but it may be given incidentally as on a *supplicavit* in Chancery, or a divorce *a mensa et thoro propter sævitiam* in the ecclesiastical court." This dictum shews that alimony, or (what is in effect the same thing) separate maintenance, may be settled by the court of Chancery incidentally, and that otherwise it cannot be fixed by the spiritual court.

But we humbly submit it to the consideration of the high and learned charac-

ters of the law whether alimony, or separate maintenance may not be made incidentally by the courts of law, where the parties are concurring, at a considerable less expence and in a much shorter period than by the spiritual court.

We do not mean to censure, much less to condemn civil process, but merely to point out to those persons whose pecuniary resources do not enable them to procure a settlement of legal alimony by the *ecclesiastical* court, where they may *probably* be able to have it effected at an expence better suited to their circumstances. If a divorce is the primary object, then the spiritual court is the proper place; yet those who have but little money cannot meddle with divorces, unless they are willing to be divorced from their ordinary

comforts. Therefore, in those cases of matrimonial dispute, where the parties are *not* affluent, and cannot agree on the *terms* of separation, we would recommend, on their parting, or immediately after, the *husband* to declare, before two credible persons, *that his wife shall not live with him, and that he will not allow her a maintenance.* Then let the wife procure board and lodging, or payment of it, from or by some friend, who, when it amounts to a few pounds, should instruct his solicitor to recover it in a court of law. A defence should be made, and the learned advocates on each side instructed to propose and consent to a reference to some gentleman in the law, (previously agreed upon by the parties, who cannot otherwise, have any concern in the cause or be affected thereby),

to ascertain the damages, *and also to settle the allowance to be made to the wife, and the mode of securing it by the husband alone*; and let the referee's award be made a rule of the court wherein the action is tried. If this is strictly complied with, and perfected by the husband, we would ask the learned reader, whether it would not be such a settlement of alimony, or separate maintenance as *should* protect the husband against the wife's debts, and all actions and suits on her account, in the temporal and spiritual courts, except for the recovery of the allowance awarded and secured? We trust it would, and that the courts of law would so far maintain their legal ascendancy and controul over the ecclesiastical courts, as to prohibit any thing being done there afterwards between the same parties.

We apprehend that the referee should consider the dependence or independence of the husband, more than his degree ; for it may be remarked, that one man in a very respectable situation of life, may be necessitous, so another in a very low and inferior station, may be affluent. Therefore, though the rank of the parties is attended to in the case of assisting or trusting a wife unprotected and unprovided for, yet we conceive, it should not be the criterion by which to ascertain the amount of her separate allowance ; but that the property and income of the husband should be principally considered. And the circumstance of the wife having had a fortune, should not, in our opinion, have any weight, where the whole or principal part of the property has been expended, wasted, or lost during the cohabitation of the par-

ties.—We could enlarge upon this subject were we satisfied the learned reader would not consider it dictatorial.

CHAP. XIII.

Observations on Arbitrations and Conveyancing.

WE recommend *one* arbitrator, because his decision will be prompt, and the expence and trouble less ; and we think, that in *every* case he should be a gentleman who has been or is in the study or practice of the *law*, as such are most competent to decide between the parties ; for there are few cases, where law and fact are not to be

taken into consideration, and scarcely any where the nature and effect of evidence, and the credibility of witnesses, do not require to be considered. Where explanation of any business, terms of art, usual custom, or other information is necessary, it is certainly better to have it from an *indifferent* person on *each* side of the question, than for an arbitrator to determine by his *own* knowledge thereof, which perhaps, is one of the causes why persons in the trade of the disputing parties are usually chosen.

We admit that in every art practice is much, and in arts manual it is almost the whole; but in the law, a course of reading and study is indispensably necessary. A gentleman in any science or business would be as well qualified to arbitrate if he was *professionally* educated, but otherwise,

it is a serious objection on the part of those interested in his determination. As well may a man who knows nothing of mathematics, attempt to consider the properties of an exact circle or square ; or one unacquainted with the mariner's compass, venture to pilot a vessel from port to port ; as for a person ignorant of the theory and practice of the law to assume the decision of a legal question, or to determine on the admissibility or validity of evidence.

Another motive why persons in the same business with the differing parties are selected, probably is, to save something in the expence ; but we conceive that it is thereby oftener increased, from some objection to their award ; for it is very rare that they agree, (if each referee is equally strict to his friend's interest), unless with the consent of the disputants, and when

they do so without it, either misconception of the case, misconstruction of the proofs, or misdirection concerning the award, produce unintentional injustice and injury to one of the parties; and of course, dissatisfaction, and an endeavour to procure redress by judicial means. And when they cannot determine either with or without the parties' consent, it is then left to an umpire, whereby there is a smaller chance of having an equitable determination, by the way he is often chosen, or by his inclination to favour one of the parties, on account of the connection in trade or otherwise. Besides an error in the decision of an unprofessional referee will not afterwards affect him in any shape, because he is not expected to decide either by the rules of law or evidence, but merely to act according to the best of his judgment;

and therefore, there is not the same cause to expect so just and impartial an award from him as from one totally unconnected in business, interest, or otherwise, with either party ; and whose legal abilities might be questioned, and professional character affected, by an erroneous arbitrament or umpirage. And further, if a jury of twelve men upon oath, after hearing the arguments of eminent advocates, the testimony of sworn witnesses, and the learned and legal observations and directions of the judge, occasionally find it difficult to give their verdict according to strict justice, owing to contrariety of evidence, it ought *not* to be supposed that *two* persons with the *same* knowledge and abilities, but *without such obligation, advantages, and assistances*, can, in general, make a clear and equitable decision.

The motive which we have assumed to influence the choice of arbitrators, may be considered allied to that which influences some individuals of property, with mistaken economy, to resort to those persons in the profession of the law, who profess, by advertisements in the newspapers and otherwise, to prepare deeds, &c. for considerably less than the usual and legal charges. But such oversaving folks do not reflect, or perhaps know, that the first *prudent* step on the purchase of property transferable by deed, or on the loan of money upon such, is to inquire into and examine the title thereto, (which in such cases, sometimes double the proposed expence would not permit) ; for if that is defective, the whole may be lost, or one half expended to preserve the remainder. Nor can they be aware, that in the science of

conveyancing, the art of drawing deeds, &c. does not consist in preparing such as *may do* while they are kept in the iron chests of the parties, but in penning such forms as are legally and technically fit and proper to answer the several purposes proposed by them; and which will bear the test of the sages of the law.

We have too often seen deeds which might appear to incompetent judges perfectly regular, but intrinsically they were not worth the value of the stamps upon them; and consequently, the representatives of the purchasing or lending parties, either *lose* the property which are the subjects of such ill-framed instruments, or *necessarily* and unavoidably sustain ten times the expence saved by their parsimonious ancestors, in remedying the defects. And as *our* interest neither has been or can be prejudiced

by such means, but on the contrary, often promoted, it cannot be supposed that we speak feelingly ; yet we would rather forego a fee than witness the evil. The same remarks are applicable to leases in general, as well as to settlements and wills ; but in the last case, the loss falls on those meant to be benefitted.

Other reasons could be given, to shew the reader the impolicy and impropriety of choosing *unprofessional* arbitrators or umpires ; or of endeavouring to save a few pounds at the risk of losing hundreds, either by employing advertisers of cheap deeds, or of evading those expences which should fall on him, and which is often the case ; but we should exceed our proposed limits, by dwelling upon those subjects which are not connected with the rest of our work.

The advantages to arise from any thing, must depend on the right use and application of it to its proper end and purpose ; observations are useless if unattended to, and assistances are unprofitable while they are despised.

In matters of reason as well as in objects of sense, it frequently happens, that what at first appearance is fair in view, proves of no esteem on strict examination. Some fruits attract the eye but disgust the palate. A traveller may admire them at a distance, but the taste would rectify the mistake. So likewise, some arguments strike the fancy and captivate the judgment, yet upon reflection, the demonstration dwindles into nothing, and takes away the cause for admiration. How far such may be the case with the reflections contained in this little work, it is for the learned,

scientific, and enlightened readers to determine.

We now beg permission, respectfully, to take our leave, and to end our present labours, by inserting a few lines selected from an Essay on Criticism :

- “ Whoever thinks a *faultless* piece to see,
- “ Thinks what ne’er was, nor is, nor e’er shall be.
- “ In ev’ry work regard the *writer’s* end,
- “ Since none can compass more than they *intend*.
- “ Many for *language* all their care express,
- “ And value books, as women men, for dress :
- “ Their praise is still, the style is excellent ;
- “ The sense, they humbly take upon content.
- “ Some ne’er advance a judgment of their own,
- “ But catch the spreading notion of the town.
- “ Some judge of authors’ names, not works, and then
- “ Nor praise nor blame the writings, but the men.
- “ Some praise at morning what they blame at night,
- “ But always think the last opinion right.
- “ Some valuing those of their own side or mind,
- “ Still make themselves the measure of mankind.

“ Ah ! ne’er so dire a thirst of glory boast,

“ Nor in the critic let the man be lost !

“ Good nature and good sense must ever join ;

“ To err is human, to forgive, divine.

FINIS.

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MÜNCHEN

Lewis, Randle

Reflections on the causes of unhappy marriages An epitome of the law of
marriage and divorce ; With judicial decisions ...

London 1805

J.rel. 270

urn:nbn:de:bvb:12-bsb10563603-4